



COMMUNITY DEVELOPMENT DEPARTMENT

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PLANNING COMMISSION MEETING MINUTES

REGULAR MEETING

MAY 23, 2006

PRESENT: Acevedo, Koepp-Baker, Davenport, Escobar, Lyle, Mueller

ABSENT: None

LATE: Benich, who arrived and was seated at 7:02 p.m.

STAFF: Community Development Director (CDD) Molloy Previsich, Planning Manager (PM) Rowe and Minutes Clerk Johnson

Chair Lyle called the meeting to order at 7:00 p.m.

DECLARATION OF POSTING OF AGENDA

Minutes Clerk Johnson certified that the meeting's agenda was duly noticed and posted in accordance with Government Code Section 54954.2.

OPPORTUNITY FOR PUBLIC COMMENT

With no members of the audience indicating a wish to address matters not on the agenda, the time for public comment was closed.

CHAIR LYLE ANNOUNCED THAT THE MINUTES OF MAY 9, 2006 WOULD BE CONSIDERED AT A FUTURE TIME.

PUBLIC HEARING:

1) DAA-04-09: E. DUNNE-DELCO A request to amend an approved development agreement for a 36-unit portion of a 78-unit single-family home project to be located at 420 and 530 E. Dunne Ave., fronting the southwest corner of E. Dunne Ave. and San Benancio Way. The amendment request is to extend the development schedule to allow for additional time to commence construction.

PM Rowe gave the staff report, explaining the request was for a three-month extension, and provided the background of the approval for the subdivision and development agreement in 2005 by the City Council, on recommendation from the Planning Commission. PM Rowe noted that, while the developer had worked with 'due diligence' to meet the deadlines, the high degree of wet weather during the spring this year was a major factor in the request before the Commissioners. PM Rowe called attention to

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Exhibit B of the development agreement which created the time line for the project and noted that in February 2006 a six-month extension had been approved as an amendment to the development agreement. PM Rowe pointed out that while the project appears to largely be 'on track' there is a degree of uncertainty in meeting the June 30 *commencement of construction deadline*. He called attention to the final map recordation which is in place, and the building permits obtained as substantial effort for work on the project, citing again the wet weather conditions as circumstances beyond the control – and not a result – of developer inaction.

PM Rowe presented the revised resolution which had been prepared, noting Exhibit B with the schedule modifications

Commence Construction:

FY 2005-06 (8 units)	June September 30, 2006
FY 2006-07 (13 units)	June April 30, 2007
FY 2007-08 (8 units)	June April 30, 2008
FY 2008-09 (8 units)	June April 30, 2009

and the addition of the following to the Resolution's first page:

Whereas, a recent soil test has confirmed that the site soils are too saturated to be properly compacted in time to meet the 6/30 commence construction date.

Whereas, the project has recorded a final map, posted all necessary bonds and paid for and picked-up all required building permits in accordance with the approved development schedule. These actions further demonstrate that the applicant's commitment and intentions to proceed as soon as the wetness condition is cured.

Commissioner Benich arrived and was seated with the Commissioners on the dais at 7:02 p.m.

Chair Lyle opened the public hearing.

Don Lapidus was present representing Delco and DeNova Homes, developers of the E. Dunne-Dempsey project. Mr. Lapidus asked the Commissioners questions regarding the alternative dates in Exhibit B, specifically the April dates for 2007-8-9? Chair Lyle responded, speaking of the necessity of pulling permits timely and having the off-site improvements completed by September 30 to avoid rainy season delays, and the other date changes are necessary to achieve timely project completion. Mr. Lapidus said he planned to pull permits this week for the second phase, adding, "We're trying to get ahead of phase two." Mr. Lapidus acknowledged that the variant times noted in the Resolution might be beneficial.

With no others to speak to the matter, the public hearing was closed.

COMMISSIONER MUELLER OFFERED A RESOLUTION RECOMMENDING APPROVAL OF DEVELOPMENT AGREEMENT AMENDMENT APPLICATION DAA-04-09 FOR APPLICATION MP-02-06: E. DUNNE-DEMPSEY (DELCO), TO ALLOW FOR A THREE-MONTH EXTENSION OF TIME FOR COMMENCEMENT OF CONSTRUCTION FOR 8 ALLOCATIONS RECEIVED IN THE 2003 RDCE COMPETITION, INCLUSIVE OF THE

MODIFICATIONS IDENTIFIED:

(add) Whereas, a recent soil test has confirmed that the site soils are too saturated to be properly compacted in time to meet the 6/30 commence construction date.

Whereas, the project has recorded a final map, posted all necessary bonds and paid for and picked-up all required building permits in accordance with the approved development schedule. These actions further demonstrate that the applicant's commitment and intentions to proceed as soon as the wetness condition is cured.

Exhibit B

Commence Construction:

FY 2005-06 (8 units)	June September 30, 2006
FY 2006-07 (13 units)	June April 30, 2007
FY 2007-08 (8 units)	June April 30, 2008
FY 2008-09 (8 units)	June April 30, 2009

CALLING ATTENTION TO THE FINDINGS AND CONDITIONS WITHIN THE RESOLUTION, COMMISSIONER ESCOBAR SECONDED THE MOTION, WHICH PASSED WITH THE UNANIMOUS AFFIRMATIVE VOTE OF ALL COMMISSIONERS PRESENT; NONE WERE ABSENT.

For the record, Commissioner Mueller announced he had talked with PM Rowe and it was thought that he had no conflict in addressing the upcoming agenda item. However, Commissioner Mueller said he did wish to announce that he sits on an Advisory Board for use of the DePaul Health Center; and the main site of that Health Center is adjacent to the facility which will be discussed. Commissioner Mueller explained that the Advisory Board in which he participates reports to O'Connor Hospital, owner of record of the DePaul Health Center.

**2) USE
DETERMINATION
RELATED TO
ST. LOUISE
HOSPITAL PUD**

A request that the Planning Commission determine whether a proposed use within the St. Louise Cancer Center would be consistent with the applicable PUD regulations.

For the benefit of the audience present, Chair Lyle explained the purpose of the Cancer Center and further explained that the request appears to be for the purpose of radiology equipment experimentation.

CDD Molloy Previsich gave the staff report, referencing the PUD language which says that substantial changes can only be made after public hearings before the Planning Commission and the City Council (via an amendment process). CDD Molloy Previsich noted the applicant's plans were:

- for R&D only; not for manufacturing
- leasing only a portion of the existing cancer care building

CDD Molloy Previsich also noted Varian (the applicant) representatives were present to answer questions.

Commissioner Acevedo requested clarification whether the proceedings at this meeting were to be concluded with discussion, or if action was anticipated? CDD Molloy

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Previsich indicated the Commissioners were being asked to determine if the request (radiotherapy equipment R&D and testing) is a consistent use with the PUD use description for the building as a 'cancer care center'. CDD Molloy Previsich said if the Commissioners find consistency, then the applicant will make application for a building permit. If the Commissioners find it is not consistent, and if the applicant wishes to pursue the location, a submittal for a zoning amendment would be required.

Commissioner Acevedo continued by asking if the Commissioners would be expected to offer a motion regarding the matter? [Yes] He also inquired if the applicant foresees research on patients? CDD Molloy Previsich said it was her understanding that would not occur.

Commissioner Koepp-Baker said a major factor in the decision making process would be the ability to have the facility changed back to a patient care center.

Commissioner Mueller called attention to the diagram in the packets distributed prior to the meeting, and he asked how much of the building would be leased? CDD Molloy Previsich indicated that Exhibit A building floor plan shows approximately one-third of the building's square footage.

Chair Lyle opened the public hearing.

Steve Gibson, Senior Vice President of Colliers International (Commercial Real Estate Offices) was present to address the Commissioners. Mr. Gibson also indicated that Jeff Wright, Director of Corporate Facilities and Real Estate for Varian and other representatives of the company were present, as were the owners of the building being discussed. Mr. Gibson clarified that the facility was being considered for Research and Development (R&D) equipment testing only, with no patients being seen. Mr. Gibson said the company would be 'fine tuning the equipment, looking at new generations of the current designs and other generations, with testing to be completed over the next three years. Mr. Gibson affirmed that the company is working to lease approximately 25% of the existing building, and further noted that while Varian officials anticipate leasing about 10,000 sf, not all that would be utilized in the R&D operations.

Mr. Gibson stated that Varian is a leading software manufacturer and distributor of cancer research. He said the company must seek out vaults with testing cells, which are difficult to find and that the company looks for abandoned facilities which had been used for treatment as those can be used for development of next generation treatment. Mr. Gibson noted that the rooms for R&D are expensive to establish and maintain.

Chair Lyle asked if the company foresees anything being done which would preclude returning the facility use to that presently designated? Mr. Gibson explained that at present, the facility has 3 – 6-foot lead-lined walls, and a lead lining will be added for a new generation of testing equipment. Mr. Gibson said that with that requirement, the company does not see themselves as other than improving that which is in existence.

CDD Molloy Previsich clarified other improvement may be needed over time to meet the requirements of the testing procedures.

Commissioner Koepp-Baker asked what testings will be done monthly and weekly to

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ensure safety is met for the employees of the operation, as well as surrounding businesses.

Jeff Wright, Varian Director of Corporate Facilities and Real Estate, said that it is known that while radioactivity is used in the room, there will be no residual(s) that affects the building or room itself. Mr. Wright spoke on the company's testing policies and commitment to safe environment. Mr. Wright explained that the moving of equipment and testing devices does not occur often, as they are bolted to the floor.

Commissioners asked questions regarding:

- equipment currently in the building [none that Varian is aware of]
- meeting code requirements
- each user having certification from State physicists (every piece of equipment different, so not generic certifications)
- probable comparisons with Varian's competitors
- knowledge of O'Connor Hospital's personnel regarding having varying equipment in place

CDD Molloy Previsich summarized that the building requirements to meet code for this purpose is estimated to be equal or more than would be required if patients would be treated, so this use would not preclude the area returning to us for patient care.

Commissioner Acevedo asked if the applicants have indicated intent – on completion of their lease – for revision to patient care use?

Physician Joseph W. Kraut, Sr., 18511 Mission View Dr., spoke to the Commissioners as one of the owners of the building. Dr. Kraut said the proposal is for only for part of the building, with the remainder continuing to be used for a medical internist's practice. He stressed the importance of this temporary occupancy to be able to continue medical practice there at all. Dr. Kraut said the closing of the hospital has had a drastic effect on numbers of patients seen at the facility and cited other factors as well. Dr. Kraut added that this is an opportunity for competitiveness to return to the area. Dr. Kraut responded to questions by stating, "This is still a medical facility, will continue to be so, but will be more viable with this interim use of a portion of the building.

Commissioner Mueller asked Dr. Kraut if patients will continue to be seen in the building? Dr. Kraut explained that he had practiced for over 40 years and had tried to retire six years ago and had now come to the point where he will not personally be involved, but was hopeful that others may come in. Commissioner Mueller said that he hated to see Dr. Kraut retire, as he and his partner's commitment to patient care were very valuable assets to the community.

With no others to address the matter, the public hearing was closed.

Commissioner Benich reminded that the Commissioners and City Council had denied a request from the San Jose Bible College for rezoning, as the City wanted to keep the medical facilities intact. CDD Molloy Previsich indicated that use had been proposed for the hospital building itself, not this cancer care building.

Commissioner Mueller noted Dr. Kraut suggested this to be an interim use, with Varian

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anticipating considerable expenditures for R&D, then return the facility to patient care while retaining medical use.

Chair Lyle was requested to reopen the public hearing.

Commissioner Mueller asked Varian representatives to estimate the dollar amount they plan to spend on converting the facility. The response: "About \$300,000 on the treatment room to bring it up to the necessary standards." Commissioner Mueller further clarified that the improvements would be permanent. "They will stay," he said.

Discussion followed regarding:

- cost of such a facility in industrial space [in excess of \$1,000,000, plus a time factor; it was noted this is very specialized, so if an existing facility can be utilized, it can be 'on-line' much sooner]
- use limited to R&D
- patients consultation possible in the future
- this is a specialized building not part of main hospital
- interim use for three years – extension possible?

Both Dr. Kraut and Varian representatives indicated negotiations were in process and are 'very close' to finalization. Chair Lyle indicated he was pleased at that news, saying, "I have no concerns about a short-term agreement, but if it is for 50 years, I'll feel differently."

Mr. Gibson said Varian had purchased property in Nevada where a new building will be constructed; stressing this is truly an interim operation. Responding to a question, Mr. Gibson said Varian 'can live with three years'.

CDD Molloy Previsich reminded that the Commissioners' decision is limited to land use consistency only.

Chair Lyle closed the public hearing.

Commissioner Mueller said, "This interim use is one which enhances the building for future use of patient care and is a good investment in the community." He recapped the operation of the facility since 1990, and said, "If Varian puts in three years, we may get 15 years of use for the community. This is good interim use."

Commissioner Acevedo indicated he could 'buy into' what Commissioner Mueller said. "As pure R&D, the use would not be consistent with the PUD guidelines, but if the end result is an improved building and the oncology center reestablished, then overall I can support it. But personally, I don't think that the site is good just as an R&D facility. Other sites in the City are better."

Chair Lyle pointed out the importance of retaining a medical facility designation at that site with patient treatment in the other part of the building, which he said was consistent with the goal of the PUD.

COMMISSIONER MUELLER MOTIONED TO FIND:

- **THAT AS AN INTERIM USE, THIS USE FALLS WITHIN THE RANGE OF USES ALLOWED BY THE PUD;**
- **IT WILL BE A BENEFIT TO THE COMMUNITY IN THE LONG RUN,**
- **AND FURTHER, IT IS AN OPPORTUNITY TO HAVE VARIAN MAKE AN INVESTMENT IN THE COMMUNITY WHICH WILL STAY FOR A LONG PERIOD OF TIME.**

COMMISSIONER BENICH SECONDED THE MOTION.

Responding to a question from the Chair, CDD Molloy Previsich said there was not a problem with the wording of the motion {inclusive of the word *interim*} as it was clearly understood the use would be as described by the applicants, but without a time limit determination.

THE MOTION PASSED BY THE FOLLOWING VOTE: AYES: ACEVEDO, KOEPP-BAKER, BENICH, DAVENPORT, ESCOBAR, LYLE, MUELLER; NOES: NONE; ABSTAIN: NONE; ABSENT: NONE.

The City Council has requested that each Commission prepare a workplan for FY 2006-07. The Planning Division must also prepare a workplan, which is submitted to the City Manager's Office, reviewed by the City Council, and reflected in the budget that is adopted.

**3) PLANNING
COMMISSION
WORKPLAN FOR
FISCAL YEAR
2006-2007**

CDD Molloy Previsich provided the staff report with an overview of the item, with Commissioners discussing the instruction from the City Council to prepare a workplan for FY 2006-07.

Commissioner comments regarding the matter included:

- need for 'visible means of getting to projected achievements for 2020 and 48,000 population for usable parkland [CDD Molloy Previsich advised she will speak to the Director of Public Works as to Parks in that Department's workplan and what role the Planning Commission would play for end result]
- necessity for an 'event' when Planning Commissioners, together with staff, set goals for accomplishments during the year
- detailed workplan presented last April; the current document is a refinement of that
- need for specific items to be addressed in the workplan; e.g., street standards
- suggestion of 'mini-workshops' to address those identified items [not an entire day, but an hour or so before the regular meeting]
- the workplan as an opportunity to step back and look at General Plan Implementation progress.
- the workplan could reflect the CIP, with indicators of progress
- lack of long-term assessment: Concern that the City is half-way through the General Plan cycle and there is need for the Planning Commission to 'step back and look at the progress'
- discussion of General Plan update timeline
- consideration of need to begin new General Plan update on receipt of regional housing needs assessment (to be provided by 2008) [this resulted in detailed

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discussion of working on a comprehensive General Plan update based on 2008 data; some Commissioners expressed the need to obtain 'whole census data' which would be available in 2012 or 2013.

- tracking for General Plan update

CDD Molloy Previsich commented that there is no housing allocation competition this fall, so staff would like to focus on updates of codes and regulations, and special studies: the Southeast Quadrant Study; and Downtown Plan Update and Implementation. CDD Molloy Previsich suggested that perhaps a brainstorming session could be scheduled to decide future action for the workplan.

Chair Lyle remarked he would like to have an assessment for the CIP before the next one is presented.

Discussion followed regarding 'how much more is needed for the 2020 CIP and also for the interim', and that a Planning Commission workshop should be held prior to CIP consideration.

Chair Lyle opened the discussion for public comment. There were none present to address the matter.

The Commissioners and staff shared observations on areas of interest:

- auto dealership strategy [matter has been referred to Community Economic Development Subcommittee; CDD Molloy Previsich said may be 'on hold']
- Murphy Avenue Corridor Study
- Southeast quadrant
- industrial lands zoning
- plans southeast for industrial park
- regional sports complex
- economic plans update for City
- possible PUD for autos dealership
- concern for immediate need to study Murphy Corridor because of impact by Cochrane Center - important to settle issue
- street standards (to be agendaized for July)
- time needed to update Measure "C" criteria
- getting CIP focused on expenditures of projects that implement the General Plan
- differences in definition of 'real parkland'

CDD Molloy Previsich advised that a consultant has been retained to study land use from an economic prospective regarding the Southeast Quadrant and Industrial Lands.

THE PLANNING COMMISSION AGREED TO FORWARD THE WORKPLAN TO THE COUNCIL, WITH THE ADDITION OF A WORKSHOP ON GENERAL PLAN/CIP IMPLEMENTATION.

ANNOUNCEMENTS: CDD Molloy Previsich announced the scheduling of a joint workshop with the Morgan Hill Downtown Association and City Council, which will be conducted by the Council subcommittee June 12, 2006, 1 – 4 p.m., with the purpose being input and discussion with property owners/stakeholders regarding the plan. She indicated there might be a 'brainstorming' session of the possibility of a ballot measure concerning housing and

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‘mixed-use’ for downtown. Also scheduled is a presentation of the developers of the Cochrane Center for retail improvement for downtown.

Commissioner Koepp-Baker asked if the Planning Commission was being excluded? CDD Molloy Previsich explained this is the very beginning of the discussions. Chair Lyle noted there is not much time after the June ballot for determinations and said it would be important for the Commissioners to attend. Chair Lyle polled the Planning Commission for potential attendance: Acevedo, Koepp-Baker, Benich, Lyle, and (maybe) Mueller.

Commissioner Acevedo spoke on attendance having a good ‘mix’; it would be much better than limiting, he said. Chair Lyle said there is a ‘great deal of interest’ in the Downtown.

Commissioner Koepp-Baker suggested addressing economic development responsibility at the meeting, stressing the need to ‘do something on Measure C’.

The Commissioners discussed that this would be a meeting of the two member Council subcommittee.

Chair Lyle stressed that the Commissioners had ‘definite interest’, but did not expect a joint meeting. CDD Molloy Previsich would let Commissioners know about final workshop arrangements (It was decided to post the workshop as a Planning Commission Special Meeting.)

ADJOURNMENT: As there was no further business to be considered by the Commissioners at this meeting, Chair Lyle adjourned the meeting at 8:09 p.m.

MINUTES PREPARED BY:

JUDI H. JOHNSON, Minutes Clerk